LIBRARY
SUPREME COURT, U. S.

Nos. 73-376 and 73-449

FILED
OCT 31 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

ETTORE COCO, PETITIONER

v.

UNITED STATES OF AMERICA

LOUIS NAKALADSKI, A/K/A LOUIS NASH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-376

ETTORE COCO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 73-449

LOUIS NAKALADSKI, A/K/A LOUIS NASH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The issues presented are whether evidence of transactions and occurrences not charged in the indictment are admissible to show the nature and scope of the conspiracy charged; whether a defendant is entitled to a severance in order to call his co-defendant as a witness; whether it was an abuse of discretion to deny a continuance and reopening in order that a rebuttal defense witness might be called; and whether, in a noncapital case, the names of proposed government witnesses must be disclosed to defendants.

After a three-day jury trial in the United States District Court for the Southern District of Florida, petitioners were convicted of conspiring to make and of making extortionate extensions of credit, in violation of 18 U.S.C. 892, conspiring to use and using extortionate means to collect extensions of credit, in violation of 18 U.S.C. 894, and obstructing commerce by extortion, in violation of 18 U.S.C. 1951. Petitioner Coco was given concurrent sentences of fifteen years' imprisonment on each of the six counts on which he was convicted and was fined $10,000 on each count, for a total fine of $60,000; petitioner Nakaladski was given concurrent sentences of ten years' imprisonment on each of the five counts on which he was convicted and was fined $5,000. The court of appeals affirmed in a lengthy opinion (Pet. App. A2-A22).[1]

The facts of the case are set forth in the opinion of the court of appeals. In essence they show that, from 1966 on, petitioners and one James Michael Falco (a fugitive co-defendant) were associated together under Coco's direction in the conduct of a loan-sharking business, in which threats of violence were frequently used to insure collection of the loans (Pet. App. A3-A5). The indictment was based upon loan transactions with two specific victims—Joel Whitice and Richard Besola—who procured their loans from Falco. Whitice made most of his payments to Falco, but made some to petitioners; although he was never threatened expressly, his awareness of the consequences of nonpayment was demonstrated by statements which he made to his legitimate creditors to gain their consent to his continuance of the payments which he was making to Falco

[1] "Pet. App." refers to the appendix to Coco's petition, No. 73-376.

(Pet. App. A5-A6). Besola, who was inferentially threatened by Coco when he fell behind in his payments, made payments to both Falco and Coco (Pet. App. A7 -A8).

1. Coco contends (Pet. 14-18) that he was prejudiced by assertedly irrelevant testimony concerning transactions and occurrences not charged in the indictment, which he claims was admitted only to show his reputation. The court of appeals correctly held that the evidence was properly admitted to establish petitioners' motive and intent, their method of doing business, the existence of a general conspiracy of which the conspiratorial and substantive offenses involving Whitice and Besola were integral parts, and the relationship between petitioners and Falco (Pet. App. A10-A11). Coco's further contentions—that he was entitled to a severance in order to call Nakaladski as a witness on his behalf (Pet. 8-12); that a legally obtained tape recording of a conversation occurring after the events charged in the indictment was irrelevant and its admission against him prejudicial (Pet. 12-14); and that it was an abuse of discretion to deny him a continuance and permission to reopen in order to call Besola's son to rebut Besola's testimony (Pet. 18-20)—were considered and properly rejected by the court of appeals (see Pet. App. A19-A21 as to severance, A16-A17 as to the tape recording, and A21-A22 as to the continuance), upon whose opinion we rely.

2. Nakaladski's sole contention is that his rights to due process and the effective assistance of counsel were violated by the trial court's refusal to require the government to disclose its witnesses in advance of trial, since the refusal left him with no forewarning that the government would offer evidence concerning

petitioners' general loan-sharking enterprise in order to illuminate the nature of the transactions involving Whitice and Besola. The court of appeals correctly adhered to the well-established rule that the refusal to require pretrial disclosure of the names of government witnesses is not an abuse of discretion (Pet. App. A11, n. 5). See *United States* v. *Annoreno*, 460 F. 2d 1303, 1310 (C.A. 7), certiorari denied, 409 U.S. 852. The cases upon which Nakaladski relies—which concern such matters as the duty of the prosecutor to disclose facts which are exculpatory or usable for impeaching prosecution witnesses (see Pet. 9-11), the constitutionality of notice-of-alibi rules (see Pet. 12), the right to adequate time in which to consult counsel (see Pet. 13), and the right of a defendant to present other witnesses before testifying himself (see Pet. 13-14)—do not support his contention.

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

DOJ-1973-10